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Appellant's Appeal Brief original and three copies

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Serial No.: 09/663,453

Filed: September 15, 2000

First Inventor: Syam Prasad Aribindi

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APR 30 2004

Re: Patent Application of Aribindi

Examiner: Sujatha R. Sharma

Serial No.: 09/663,453

Group Art Unit: 2682

Filed: September 15, 2000

Docket No.: 013436.0212PTUS
(Aribindi 1-2-3)For: Radio Link Protocol Framing System
For High Speed Data Transfer Over
Digital Cellular Mobile
Telecommunication Networks

Confirmation No.: 3610

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Attention Examiner Sujatha R. Sharma, Mail Stop AF Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,
Facsimile No. 703-872-8308Elaine C. Von SperdubenApril 30, 2004
DateAttention Examiner Sujatha R. Sharma
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPELLANT'S APPEAL BRIEF

Appellant's Appeal Brief was timely filed pursuant to 37 CFR §1.192 because it was filed within two months of 1 March 2004, which is the date on which Appellant filed their Notice of Appeal.

Appellant believes that the claims appealed are patentable as argued in the Brief. If the Examiner has any questions concerning Appellant's Brief or the Arguments presented in the Brief and feels that an interview pursuant to MPEP sections 713.05 and 713.09 may be helpful in resolving the issues on appeal, attorneys for the Appellant would urge the Examiner to contact the attorneys for Appellant to arrange such an interview, even if the refiling of this application is necessary for this purpose.

Appellant's attorneys respectfully solicit the Board to remand this case to the Examiner with instructions to allow the case pursuant to 37 CFR §1.197(a).

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Published EPO patent application WO 99/41853 filed by Kim.

OUTLINE OF APPEAL BRIEF**1.) REAL PARTY IN INTEREST**

The party named in the caption of the Brief is Lucent Technologies, Inc.

A full list of inventors is: Syam Prasad Aribindi;
Tejaskumar R. Patel; and
Thomas Duncan.

The subject matter of the invention was derived from research efforts undertaken by Lucent Technologies at the Lucent Technologies facilities in Naperville, IL.

The inventors assigned the invention to Lucent Technologies, Inc., located at 600 Mountain Avenue (Room 3C-512), P.O. Box 636, Murray Hill, New Jersey 07974-0636. The assignment was recorded at reel 011432/frame 0353.

The real party of interest is accordingly Lucent Technologies, Inc. because Lucent Technologies, Inc. owns the entire right, title and interest to the present invention.

2.) RELATED APPEALS AND INTERFERENCES

37 CFR 1.192(c)(2) requires Appellant, Appellant's legal representative, or the assignee to identify by serial number and filing date all appeals and interferences known. Presently, no appeals or interferences are known by any party.

3.) STATUS OF THE CLAIMS

37 CFR 1.192(c)(3) requires the Appellant to give the current status of all claims in the prosecution. Claims 1-12 are pending. In a Final Office Action dated 5 February 2004, the Examiner rejected claims 1-12 under 35 U.S.C. §102(b) as being anticipated by Published EPO patent application WO 99/41853 filed by Kim. The Appellant appeals the final rejection of claims 1-12.

4.) STATUS OF AMENDMENTS

37 CFR 1.192(c)(4) requires the Appellant's Brief to provide a statement of the status of any amendment filed subsequent to the Final rejection. No amendment has been filed subsequent to the Final rejection.

5.) SUMMARY OF THE INVENTION

37 CFR §1.192 (c)(5) requires Appellant to give a summary of the invention. The pending claims define a Radio Link Protocol Framing System which receives data from the subscriber's terminal equipment, such as a personal computer PC, and stores this data in a buffer for transmission over the subscriber's presently active radio link. The subscriber's presently active data link implements a dedicated fundamental channel for transmitting voice data, a dedicated supplemental channel for transmitting packet data and a dedicated control channel for transmitting control messages, to the base station. The Radio Link Protocol Framing System packages the data into Core Units via Core Unit Protocol Handler for transmission over the Dedicated Control Channel and/or the Supplementary Channel (page 9, lines 4-11) of the presently active radio link being used by the subscriber's terminal equipment, depending on the volume of the user data traffic that is available for transmission.

6.) ISSUE

37 CFR §1.192(c)(6) requires the Appellant to state all the issues on appeal. The sole issue on appeal is whether the FINAL rejection of claims 1-12 under 35 USC §102(b) as being anticipated by Published EPO patent application WO 99/41853 filed by Kim should be reversed.

Appellant submits that the 35 U.S.C. §102(b) rejection of claims 1-12 set forth in the FINAL Office Action, dated 5 February 2004, fails to set forth a showing of anticipation because the Examiner has failed to cite and apply a reference which contains all of the claimed elements or limitations of Appellant's claimed invention.

7.) GROUPING OF CLAIMS**Group Claims That Stand or Fall Together**

I. 1-12

37 CFR §1.192(c)(7) requires the Appellant to group the claims in the application for appeal purposes. The Appellant groups the claims into a single group. Group I contains claims 1-12, which are directed to a Radio Link Protocol Framing System which transmits subscriber data over the Dedicated Control Channel and/or the Supplementary Channel of the presently active radio link being used by the subscriber's terminal equipment.

8.) ARGUMENT**I. Examiner's Position - Rejection under 35 U.S.C. §102(b)**

In a FINAL Office Action dated 5 February 2004, the Examiner rejected claims 1-12 under 35 U.S.C. §102(b) as being anticipated by Published EPO patent application WO 99/41853 (Kim Patent), noting with respect thereto:

Regarding claims 1 and 7, Kim discloses a CDMA communication system, which provides a dedicated control channel capable of efficiently communicating control messages between a base station and mobile station. Kim further discloses a means for storing the data generated by the terminal and further segmenting the data in the core unit to include payload of pre-determined size. Kim further discloses a method for selecting a dedicated control channel and a packet traffic channel/supplemental channel. Kim further discloses a method of packaging the core unit into a RLP frame. See Fig. 5, abstract, summary of invention, page 17, lines 10-16, page 21, lines 11-15.

Applicant's arguments filed 1/22/04 have been fully considered but they are not persuasive. The applicant is drawn to the reference Kim [WO 99/41853] where it is disclosed that a control channel is assigned to mobile stations using the packet data service and in exceptional cases the dedicated control channel may be used together with the voice traffic channel for high quality service. See page 12, lines 8-18. Since the control channel is assigned to "mobile stations" and not to any one particular mobile station, it is clear that the control channel is also assigned to the mobile station that is active and may be used together with the voice traffic channel for high quality service. The assignment of voice traffic to a mobile station is indicative of the active radio link for the mobile station to which is also assigned a dedicated control channel as discussed above.

This has been addressed in the office actions mailed on 3/26/03 (paper #7) and 11/20/03 (paper #12).

II. Appellant's Characterization of the Reference

The cited Kim Patent teaches a CDMA communication system that implements a dedicated fundamental channel for transmitting voice data, a dedicated supplemental channel for transmitting packet data and a dedicated control channel for transmitting control messages (page 11, lines 2-12). The Kim communication system provides a dedicated control channel that extends from the base station to the mobile station for transporting control messages. The control messages can be inserted into a frame of one of two predetermined lengths (page 14, lines 14-21). In addition, the dedicated traffic channel performs a number of functions, one of which includes the delivering of packet data-related control messages (page 15, lines 13-17). However, when the dedicated traffic channel is not established between the base station and the mobile station and packet data cannot be exchanged between the base station and the mobile station (page 17, lines 10-16), the Kim communication system enables a user packet to be transmitted as a single brief packet (page 21, lines 11-15) over the dedicated control channel of a presently active radio link being used by another mobile station (page 12, lines 8-18). There is no teaching in the cited Kim Patent that enables the Kim communication system to use the dedicated control channel for transmitting user data when there exists a presently active radio link in use by the mobile station and the Kim communication system can only use another subscriber's radio link to forward a brief burst of data over the dedicated control channel of that radio link.

III. Appellant's Position

The Appellant disagrees with the Examiner's 35 U.S.C. §102(b) rejection of Group I claims 1-12 as being anticipated by the cited Kim Patent because the Examiner failed to establish a showing of anticipation of Appellant's claimed invention since the Examiner has failed to cite and apply prior art which contains all of the claimed elements or limitations of Appellant's claimed invention.

The prior art Kim Patent relied upon by the Examiner in the 35 U.S.C. §102(b) rejection of Group I claims 1-12 fails to contain the following elements or limitations contained in Appellant's claims 1-12:

1.) means, responsive to the existence of a presently active radio link, comprising a dedicated traffic channel presently in use by said subscriber's mobile wireless station set and an associated dedicated control channel, for selecting said associated dedicated control channel of said presently active radio link to transmit said data to said digital cellular mobile telecommunication network; and

2.) means for packaging said at least one core unit into a radio link protocol to transmit said data to said digital cellular mobile telecommunication network via said dedicated control channel of said presently active radio link.

The cited Kim Patent fails to show or even suggest a system that enables a subscriber's terminal equipment, such as a personal computer PC, to store data in a buffer for transmission over the subscriber's presently active radio link, using the Dedicated Control Channel and/or the Supplementary Channel of this presently active radio link. In contrast, the cited Kim Patent teaches that when the dedicated traffic channel is not established between the base station and the mobile station and packet data cannot be exchanged between the base station and the mobile station (page 17, lines 10-16), the Kim communication system enables a user packet to be transmitted as a single brief packet (page 21, lines 11-15) over the dedicated control channel of a presently active radio link being used by another mobile station (page 12, lines 8-18). There is no teaching in the cited Kim Patent that enables the Kim communication system to use the dedicated control channel for transmitting user data when there exists a presently active radio link in use by the mobile station and the Kim communication system can only use another subscriber's radio link to forward a brief burst of data over the dedicated control channel of that radio link when the dedicated traffic channel is not established between the base station and the mobile station.

The Examiner has therefore not identified any teaching in the cited Kim Patent that can be applied in a manner to render Appellant's claimed invention anticipated.

IV. Discussion of Anticipation

The courts and the MPEP state that to reject a claim as anticipated under 35 U.S.C. §102(b), the Examiner must demonstrate that the prior art relied upon by the Examiner discloses all of the claim elements or limitations. The MPEP and courts have

stated that under 35 U.S.C. §102, a claim is anticipated when a single prior art reference discloses each and every element of the claimed invention. *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984). If the reference fails to suggest even one limitation of the claimed invention, then the claim is not anticipated. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

If these requirements are not met, the cited reference does not establish a showing of anticipation for the claimed invention. The Examiner has not met the requirements of this test.

V. Comparison of the Claims with the Prior Art Illustrating the Failure of the Prior Art to Disclose Key Claimed Elements or Limitations

The independent claims on appeal are claims 1 and 7. Claim 1 is the broadest independent claim and is illustrative of claims 1-12 for the purposes of this appeal. The following analysis of the claims is summarized in claim chart form with regard to the independent claim 1, since independent claim 7 is analogous in scope to independent claim 1. All of the remaining claims depend on independent claims 1 or 7 and are therefore distinguishable over the prior art in the same manner as the independent claims and specifically independent claim 1.

The cited Kim Patent teaches a CDMA communication system that implements a dedicated fundamental channel for transmitting voice data, a dedicated supplemental channel for transmitting packet data and a dedicated control channel for transmitting control messages (page 11, lines 2-12). The Kim communication system provides a dedicated control channel that extends from the base station to the mobile station for transporting control messages. The control messages can be inserted into a frame of one of two predetermined lengths (page 14, lines 14-21). In addition, the dedicated traffic channel performs a number of functions, one of which includes the delivering of packet data-related control messages (page 15, lines 13-17). However, when the dedicated traffic channel is not established between the base station and the mobile station and packet data cannot be exchanged between the base station and the mobile station (page 17, lines 10-16), the Kim communication system enables a user packet to be transmitted as a single brief packet (page 21, lines 11-15) over the dedicated control

channel of a presently active radio link being used by another mobile station (page 12, lines 8-18). There is no teaching in the cited Kim Patent that enables the Kim communication system to use the dedicated control channel for transmitting user data when there exists a presently active radio link in use by the mobile station and the Kim communication system can only use another subscriber's radio link to forward a brief burst of data over the dedicated control channel of that radio link.

In contrast, Appellant's Radio Link Protocol Framing System receives data from the subscriber's terminal equipment, such as a personal computer PC, and stores this data in a buffer for transmission over the presently active radio link, that implements a dedicated fundamental channel for transmitting voice data, a dedicated supplemental channel for transmitting packet data and a dedicated control channel for transmitting control messages, to the base station. The Radio Link Protocol Framing System packages the data into Core Units via Core Unit Protocol Handler for transmission over the Dedicated Control Channel and/or the Supplementary Channel (page 9, lines 4-11) of the presently active radio link being used by the subscriber's terminal equipment, depending on the volume of the user data traffic that is available for transmission. This structure is not disclosed or suggested by the cited Kim Patent. Appellant's claims 1, 7 to recite this structure in these independent claims: both the presence of an active radio link from the subscriber's mobile wireless station set to the communication system and the use of the dedicated control channel of the subscriber's presently active radio link to transmit data.

VI. Claim Chart

The following claim chart compares Appellant's claim 1 with the cited Kim Patent that was noted above and relied upon by the Examiner in the rejection of claim 1, with the elements not shown in the cited Kim Patent being underlined. The failure to this reference to teach all of the elements recited in claim 1 (and analogous limitations in independent claim 7) supports Appellant's position that the Examiner has failed to make a showing of anticipation under 35 U.S.C. 102(b), thereby rendering claims 1-12 allowable.

Appellant's Claim 1

A radio link protocol framing system located in a subscriber's mobile wireless station set for providing said subscriber's mobile wireless station set with high speed data transmission capability by using the dedicated control channel of the radio link that interconnects said subscriber's mobile wireless station set with a digital cellular mobile telecommunication network, comprising:

means, responsive to a subscriber at said subscriber's mobile wireless station set requesting a data communication service, for storing data generated by terminal equipment at said subscriber's mobile wireless station set;

means for segmenting said data in at least one core unit, each core unit exclusively comprising a payload of predetermined size;

means, responsive to the existence of a presently active radio link, comprising a dedicated traffic channel presently in use by said subscriber's mobile wireless station set and an associated dedicated control channel, for selecting said associated dedicated control channel of said presently active radio link to transmit said data to said digital cellular mobile telecommunication network; and

means for packaging said at least one core unit into a radio link protocol to transmit said data to said digital cellular mobile telecommunication network via said dedicated control channel of said presently active radio link.

Kim Patent

The cited Kim Patent teaches a CDMA communication system that implements a dedicated fundamental channel for transmitting voice data, a dedicated supplemental channel for transmitting packet data and a dedicated control channel for transmitting control messages (page 11, lines 2-12). However, the Kim Patent does not provide "said subscriber's mobile wireless station set with high speed data transmission capability by using the dedicated control channel of the radio link that interconnects said subscriber's mobile wireless station set with a digital cellular mobile telecommunication network."

The Kim communication system appears to provide the function of "storing data generated by terminal equipment at said subscriber's mobile wireless station set."

The Kim communication system segments the data generated by the subscriber's terminal equipment.

In the Kim patent, there is no teaching of "selecting said associated dedicated control channel of said presently active radio link to transmit said data to said digital cellular mobile telecommunication network."

In the Kim patent, there is no teaching of "transmit said data to said digital cellular mobile telecommunication network via said dedicated control channel of said presently active radio link."

VII. Summary

For the above cited reasons, the Examiner has failed to provide a showing of anticipation with respect to the structure claimed by Appellant in independent claim 1 and the Appellant requests the 35 U.S.C. §102(b) rejection of claim 1 be removed. The remaining claims 2-12 are claims either dependent on claim 1 or dependent on analogous independent claim 7 and are allowable over the cited Kim Patent for the same reasons as articulated above with respect to Appellant's claim 1.

In summary, Appellant believes that claims 1-12 are allowable under 35 U.S.C. §102(b) over Published EPO patent application WO 99/41853 filed by Kim. Appellant therefore respectfully requests a Notice of Allowance in this application in light of the amendments and arguments set forth herein. The undersigned attorney requests Examiner Sharma to telephone if a conversation could expedite prosecution. Appellant authorizes the Commissioner to charge any additionally required payment of fees to deposit account #50-1848.

Respectfully submitted,

Patton Boggs, LLP

Dated: 04/29/04

By: James M. Graziano
James M. Graziano, Reg. No. 28,300
Tel: 303-894-6113
Fax: 303-894-9239

Customer No. 24283

9.) APPENDIX

1. A radio link protocol framing system located in a subscriber's mobile wireless station set for providing said subscriber's mobile wireless station set with high speed data transmission capability by using the dedicated control channel of the radio link that interconnects said subscriber's mobile wireless station set with a digital cellular mobile telecommunication network, comprising:

means, responsive to a subscriber at said subscriber's mobile wireless station set requesting a data communication service, for storing data generated by terminal equipment at said subscriber's mobile wireless station set;

means for segmenting said data in at least one core unit, each core unit exclusively comprising a payload of predetermined size;

means, responsive to the existence of a presently active radio link, comprising a dedicated traffic channel presently in use by said subscriber's mobile wireless station set and an associated dedicated control channel, for selecting said associated dedicated control channel of said presently active radio link to transmit said data to said digital cellular mobile telecommunication network; and

means for packaging said at least one core unit into a radio link protocol to transmit said data to said digital cellular mobile telecommunication network via said dedicated control channel of said presently active radio link.

2. The radio link protocol framing system of claim 1 wherein said means for formatting comprises:

means for selecting a single one of said core units; and

means for prepending a header to said selected core unit, said header including: a sequence number, a payload length.

3. The radio link protocol framing system of claim 2 wherein said means for formatting further comprises:

means for including a field in said header that indicates the content of said radio link protocol is for said dedicated control channel of said radio link.

4. The radio link protocol framing system of claim 1 wherein said means for formatting comprises:

means for concatenating a plurality of said core units;

means for prepending a header to said concatenated core units, said header including: a sequence number, a payload length.

5. The radio link protocol framing system of claim 4 wherein said means for formatting further comprises:

means for including a field in said header that indicates the content of said radio link protocol is for said Supplementary channel of said radio link.

6. The radio link protocol framing system of claim 5 wherein said means for formatting further comprises:

means for selecting a single one of said core units;

means for prepending a header to said selected core unit, said header including: a sequence number, a payload length; and

means for appending said header and said selected core unit to said concatenated core units.

7. A method for providing a subscriber's mobile wireless station set with high speed data transmission capability by using the dedicated control channel of a radio link that interconnects said subscriber's mobile wireless station set with a digital cellular mobile telecommunication network, comprising the steps of:

storing in a memory, in response to a subscriber at said subscriber's mobile wireless station set requesting a data communication service, data generated by terminal equipment at said subscriber's mobile wireless station set;

segmenting said data in at least one core unit, each core unit exclusively comprising a payload of predetermined size;

selecting, in response to the existence of a presently active radio link, comprising a dedicated traffic channel presently in use by said subscriber's mobile wireless station set and an associated dedicated control channel, for selecting said associated dedicated control channel of said presently active radio link to transmit said data to said digital cellular mobile telecommunication network; and

packaging said at least one core unit into a radio link protocol to transmit said data to said digital cellular mobile telecommunication network via said dedicated control channel of said presently active radio link.

8. The method for providing a mobile wireless station set with high speed data transmission capability of claim 7 wherein said step of formatting comprises:

selecting a single one of said core units; and

prepending a header to said selected core unit, said header including: a sequence number, a payload length.

9. The method for providing a mobile wireless station set with high speed data transmission capability of claim 8 wherein said step of formatting further comprises:

including a field in said header that indicates the content of said radio link protocol is for said dedicated control channel of said radio link.

10. The method for providing a mobile wireless station set with high speed data transmission capability of claim 7 wherein said step of formatting comprises:

concatenating a plurality of said core units;

prepending a header to said concatenated core units, said header including: a sequence number, a payload length.

11. The method for providing a mobile wireless station set with high speed data transmission capability of claim 10 wherein said step of formatting further comprises:

including a field in said header that indicates the content of said radio link protocol is for said Supplementary channel of said radio link.

12. The method for providing a mobile wireless station set with high speed data transmission capability of claim 11 wherein said step of formatting further comprises:

selecting a single one of said core units;

prepending a header to said selected core unit, said header including: a sequence number, a payload length; and

appending said header and said selected core unit to said concatenated core units.

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